STATE OF MICHIGAN

COURT OF APPEALS

STEVEN KUNKLER,

Plaintiff-Appellant,

v

GLOBAL FUTURES & FOREX LTD., GARY TILKIN, RIGHTSOURCE HOLDING COMPANY B L.L.C., and RIGHTSOURCE GROUP, L.L.C.,

Defendant-Appellees.

UNPUBLISHED
September 28, 2004

No. 245561
Kent Circuit Court
LC No. 02-008721-CL

Before: Fort Hood, P.J., and Donofrio and Borrello, JJ.

PER CURIAM.

In this Whistleblower's Protection Act (WPA), MCL 15.361 *et seq.*; case, plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(8) and MCR 2.116(C)(10). Plaintiff contends that he was fired in violation of the WPA after threatening to report actions of his employer – alleged violations of federal laws – to the National Futures Association (NFA). Defendants do not contest plaintiff's claim that he was terminated because of his threat, but argue only that the NFA is not a public body within the meaning of the WPA. Because we hold that the NFA is not a public body for these purposes, we affirm.

Plaintiff was the director of business development and the director of marketing for defendant Global Futures & Forex, Ltd. (Global), from April 2000 to his firing in May 2002. Global was involved in the international sale of foreign and domestic currency. Defendants Rightsource Holding Company B, LLC, and Rightsource Group, LLC, administered Global's employees' benefits and maintained the employees' personnel files. Plaintiff alleged that during 2001 and 2002, he expressed numerous concerns regarding Global's participation in illegal and unethical activities to Global's president, defendant Gary Tilkin, but that Global took no action regarding these concerns. Thus, on May 28, 2002, plaintiff delivered a letter to Tilkin outlining alleged violations of the Commodity Exchange Act, 7 USC 1 *et seq.* Plaintiff stated that if the violations were not addressed, he would report Global to the NFA. The next day, Tilkin fired plaintiff, and this claim ensued.

Defendants moved for summary disposition under MCR 2.116(C)(8) and (10), alleging that plaintiff failed to present a prima facie claim under the WPA because the NFA was not a public body as defined in the statute.

This Court reviews a trial court's decision concerning a motion for summary disposition de novo. *Manzo v Petrella*, 261 Mich App 705, 711; ___NW2d ___ (2004). If genuine issues of material fact do not exist and the moving party is entitled to judgment as a matter of law, summary disposition is appropriate. *Id.* at 711.

We first examine whether the NFA is a public body under the WPA. In pertinent part, MCL 15.361(d) states:

> "Public body" means all of the following:
>
> (i) A state officer, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of state government.
>
> * * *
>
> (iv) Any other body which is created by state or local authority or which is primarily funded by or through state or local authority, or any member or employee of that body.
>
> (v) A law enforcement agency or any member or employee of a law enforcement agency.

The Commodities Futures Trading Commission (CFTC) has exclusive jurisdiction to regulate a number of commodities futures and most dealings in foreign currency futures. However, the CFTC's powers do not abrogate those of the Securities and Exchange Commission, nor do they abrogate the powers of any court. 7 USC 2(a)(1)(A), (B); 7 USC 2(c)(2)(B), (C); 7 USC 2(i). Plaintiff argues that certain attributes of the NFA demonstrate that it functions as a public body, citing, for instance, the fact that the NFA is subject to government oversight by the CFTC, and that membership in a futures association registered with the CFTC is mandatory for entities dealing in commodities futures. See 7 USC 21(m); 17 CFR 170.15. However, mandated membership in an organization does not make that organization a public body.

Plaintiff next argues that because the NFA implements the statutes "and regulations pertaining to the futures currency market" through its rules, it is a public body. We disagree. All the NFA's functions and rules are first approved by the CFTC before being implemented, and these rules must exhibit sufficient compliance with the enabling statute "and the rules and regulations thereunder." See 7 USC 21(b)(1) and (2); 7 USC 21(j).

"If a statute provides its own glossary, the terms must be applied as expressly defined." *Barrett v Kirtland Comm College*, 245 Mich App 306, 314; 628 NW2d 63 (2001), citing *Tryc v Michigan Veteran's Facility*, 451 Mich 129, 136; 545 NW2d 642 (1996). MCL 15.361(d)

expressly defines "public body." Thus, regardless whether plaintiff intended to report violations of either state or federal law, the report must still be made to a "public body" as defined in MCL 15.361(d). We find that the NFA is not a public body as defined by the statute. See *Manzo, supra.* Rather, the NFA is a private corporation that has authority to suspend its members and make reports of those actions to the CFTC, which itself is subject to review by the SEC. Additionally, the statute specifically states that a public body is a state or local agency or a division thereof. Hence, the WPA specifically excludes federal agencies by omission. Therefore, the NFA does not fall within the definition of a public body for two reasons: it is a private corporation, and it is a federal body.

Plaintiff argues that the WPA is a remedial statute that is to be liberally construed in favor of the people that it is intended to protect. *Dudewicz v Norris Schmid, Inc*, 443 Mich 68, 76-77; 503 NW2d 645 (1993). As a result, plaintiff argues, the WPA should be construed to include his claim. In support of this contention, plaintiff argues that employees do not have to be specific about the identity of the authority to which they may have been, or will be, reporting wrongdoing. However, statutory construction must give effect to the intent of the Legislature, and legislative intent is to be derived from the plain language of the statute involved. See *Shallal v Catholic Social Services*, 455 Mich 604, 611; 566 NW2d 571 (1997). Although we acknowledge that the WPA should be construed liberally, plaintiff's request that we ignore the plain definition of public body to reach a construction more favorable to plaintiff must be declined. Statutory interpretation should avoid construction of the statute that would view any part of the statute "surplusage or . . . nugatory." *Hoste v Shanty Creek Management, Inc*, 459 Mich 561, 574; 592 NW2d 360 (1999). For these reasons, plaintiff's argument is without merit.

Plaintiff additionally argues that even if the trial court correctly granted defendants' motion for summary disposition, he should still be allowed to amend his complaint to include a public policy claim. We disagree.

Generally, employment is terminable at will unless otherwise agreed. *Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 694-695; 316 NW2d 710 (1982). In *Suchodolski*, our Supreme Court acknowledged three exceptions to this rule, based on public policy considerations, that would give rise to a cause of action on the part of a discharged employee: (1) explicit legislation prohibited the discharge; (2) the employee was discharged for refusing to violate the law in the course of employment; or (3) the discharge was retaliation in response to the employee's exercise of a clearly established right created by legislation. *Id.* at 695-696. Plaintiff's claim does not fall into any of the three currently recognized exceptions; accordingly, we affirm.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello